

DEPARTMENT OF STATE REVENUE

03-20200394R.MOD

Memorandum of Decision NUMBER: 03-20200394R
Withholding Tax
For the Tax Periods January and February 2019

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this final determination.

HOLDING

Out-of-state business demonstrated that it was entitled to a refund of overpayment, excluding collection fees.

ISSUE

I. Withholding Tax - Refund.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-2; IC § 6-8.1-8-2; IC § 6-8.1-8-4; IC § 6-8.1-8-8; *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Ind. Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Ind. Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Ind. Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Sq. Amoco, Inc. v. Ind. Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the refund denial, claiming it is entitled to the full refund.

STATEMENT OF FACTS

Taxpayer is an out-of-state company doing business in Indiana. In July 2018, Taxpayer opened its withholding account, remitting the withholding tax on wages paid to its Indiana employees. Beginning January 2019, Taxpayer stopped filing the required returns.

In August 2019, the Department of Revenue ("Department") issued proposed assessments for January and February 2019 (Liability Numbers 2019-03677009 & 2019-03743406) ("Tax Periods at Issue") based on the best information available then. Taxpayer did not protest the assessments. Rather, Taxpayer filed BC-100 form to close its withholding account in August 2019. However, Taxpayer did not file the required returns - such as "zero" returns - to resolve the January and February assessments, which were outstanding. Subsequently, in October 2019, Taxpayer's bank account was levied by the Department's collection agency.

In 2020, Taxpayer filed a claim for refund (Refund Claim Number 2219184). The Department denied Taxpayer's refund in full, stating there is no over payment.

Taxpayer protested the refund denial. An informal telephonic administrative hearing was held and this final determination results. Further facts will be supplied, as necessary.

I. Withholding Tax - Refund.

DISCUSSION

The Department denied Taxpayer's refund in full. In a letter, dated August 27, 2020, the Department explained that "[n]o overpayment exists for period ending 2019." Taxpayer, to the contrary, claimed that it was entitled to the full refund.

In this instance, Taxpayer's refund claim stemmed from the Department's proposed assessments. Thus, as a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*,

939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

IC § 6-8.1-5-1(b) states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

IC § 6-8.1-5-1(d) outlines the taxpayer's right to protest and request a hearing within a statutory due date. IC § 6-8.1-5-1(j) and (k) further detail that the department shall demand payment after certain statutory requirements are met. See also IC § 6-8.1-8-2.

IC § 6-8.1-5-2(f) provides:

If a person files a fraudulent, unsigned, or **substantially blank return**, or if a person **does not file a return**, there is no time limit within which the department must issue its proposed assessment. (**Emphasis added**).

IC § 6-8.1-8-4 provides:

(a) When the department collects a judgment arising from a tax warrant, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees established under subsection (b) if:

- (1) an unsatisfied warrant has been issued by the department; or
- (2) the department received a tax payment by check or other instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.

(b) The commissioner and the budget agency shall set the fee that the special counsel or collection agency will receive and payment of the fee shall be made after a claim for that fee has been approved by the department.

(c) The fees become due and owing by the taxpayer upon the filing of an amended warrant with the circuit court clerk adding the fee authorized by subsection (b) to the amount of the judgment lien under section 2 of this chapter.

IC § 6-8.1-8-8(1) further permits the Department to "levy upon the property of the taxpayer that is held by a financial institution" which does business within the State of Indiana.

In this instance, Taxpayer did not timely file the required returns for the Tax Periods at Issue, resulting in the BIA assessments and subsequent levy. Taxpayer provided supporting documents, including BC-100 form to support that it was entitled to the refund.

Upon review, the Department is prepared to agree that Taxpayer's supporting documents supported that it has overpayment. However, the collection fees were not retained by the Department and, therefore, in the absence of Department error, the Department is not able to refund the collection fees.

In short, the Department is prepared to agree that Taxpayer is entitled to the refund, excluding collection fees.

FINDING

Taxpayer's protest is sustained in part and respectfully denied in part. Taxpayer is entitled to the refund, excluding collection fees.

November 17, 2020

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